

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Homeland Church of God in Christ	)	
	Ward 83, Block 26, Parcel 4	)	Shelby County
	<i>Claim of Exemption</i>	)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the partial denial of an application for exemption of the subject property from ad valorem taxation. The application was received by the State Board of Equalization ("State Board") on August 3, 2006. By letter dated October 3, 2007, State Board staff attorney Sabrina Williams notified the applicant of her approval for exemption of five (5) acres of land and the improvements on the parcel in question, effective as of the date of application. Homeland Church of God in Christ ("Homeland COGIC"), the applicant, appealed the staff attorney's initial determination to the State Board on November 26, 2007. The undersigned administrative judge conducted a hearing of this matter on January 31, 2008 in Memphis. Homeland COGIC's primary representative at the hearing was its pastor, Kendall Anderson. Staff appraiser Tom Richie appeared on behalf of the Shelby County Assessor of Property ("Assessor").

Findings of Fact and Conclusions of Law

The 19.085-acre parcel in question is located at 3529 James Road in Memphis. Homeland COGIC purchased this tract for \$125,000 on August 2, 2005. At that time, the Church was based in a tax-exempt facility at 1490 Britton Road in the Bluff City (Parcel No. 41-52-211).

When Homeland COGIC originally applied for exemption of the subject property, it was still undeveloped. Pastor Anderson noted on the application, however, that the Church was "building a new sanctuary" on this site. By early April, 2007, when he executed a second (updated) application, that project had been substantially completed; and Homeland COGIC was holding regular worship services in the new 8,600-square-foot structure.<sup>1</sup> There are paved parking areas on both sides of this building.

From aerial photographs as well as his recent inspections, the Assessor's representative estimated that the existing improvements and landscaped area encompassed not more than about four acres at the front of the subject property. The remainder of the tract consists mostly of woodland with a lower elevation.

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<sup>1</sup>Homeland COGIC has sold its former location on Britton Road.



Homeland COGIC purportedly intends to use the cleared portion of the acreage in question for various youth activities, amusements, and fundraisers during the spring and summer. The Church also plans to erect additional improvements, such as a family life center, in the future.

Article II, section 28 of the Tennessee Constitution authorizes, *but does not require*, the legislature to exempt from taxation property which is "held and used for purposes purely religious, charitable, scientific, literary, or educational." In the exercise of this power, the legislature has enacted a law stating that:

There shall be exempt from property taxation the real and personal property, **or any part thereof**, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists...; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, charitable, scientific or educational purposes. [Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(1)(A).

The State Board has adopted rules (effective July 14, 2004) which prescribe criteria for exemption of land owned by qualifying institutions such as Homeland COGIC. Rule 0600-8-.02 establishes a presumption that such land is in actual use for exempt purposes if it underlies "exempt structures or paving," or if "the total land area claimed for exemption, including that which is underlying exempt structures, is **five acres or less**." [Emphasis added.] Paragraph (3) of that Rule provides (in relevant part) that:

The applicant for exemption may rebut the presumption by proving that vacant land which would be denied exemption under the presumption is in fact being **regularly** used for exempt purposes qualifying for exemption in accordance with law. [Emphasis added.]

But "[l]and held solely for future construction or other future uses does not qualify for exemption." State Board Rule 0600-8-.02(5).

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., George Peabody College for Teachers v. State Board of Equalization, 407 S.W.2d 443 (Tenn. 1966). Nevertheless, as the party seeking to change the initial determination on its application for exemption, Homeland COGIC has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

The fact that church-owned land may have been acquired by a single deed, or may be assigned a single parcel identification number, has no bearing on the determination of its tax-exempt status. Under the express terms of the quoted statute, such land is exemptible only to the extent that it is *actually* used for religious purposes.



In effect, State Board Rule 0600-8-.02 “establishes a presumption *against* exemption of more than five acres of land associated with an exempt improvement (such as a church building).” Metropolitan Tabernacle, Inc. (Hamilton County, Initial Decision and Order, March 28, 2007), p. 3. In the opinion of the administrative judge, the appellant introduced insufficient evidence to overcome this presumption. Nothing in the record, including Mr. Anderson’s own testimony, suggests that Homeland COGIC regularly uses more than the amount of acreage approved by the State Board designee at the present time. Of course, it is recognized that this 19+-acre purchase may serve the Church’s long-term objectives by accommodating future expansion. But exemption of property from taxation generally cannot be predicated on uses of such property which have yet to commence. See Oak Ridge Hospital of Methodist Church, Inc. v. City of Oak Ridge, 420 S.W.2d 583 (Tenn. Ct. App. 1967).

Though not inclined to recommend a result *less* favorable to the appellant, the administrative judge would also observe that a later effective date for the partial exemption of the subject land may well have been warranted. Under certain conditions, Tenn. Code Ann. section 67-5-212(g) does provide for exemption of the value of *construction in progress* on property acquired by an exempt institution. However, as the Assessment Appeals Commission acknowledged in the case of Central Church, Inc. (Shelby County, Final Decision and Order, June 25, 2003), that subsection:

...has generally been construed to exempt improvements under construction, but not the underlying land....**Exemption (of the underlying land) is recognized from and after, but not before, the improvements were completed and in use.** [Emphasis added.]

*Id.* at p. 2.

#### Order

It is, therefore, ORDERED that the initial determination of the State Board’s staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

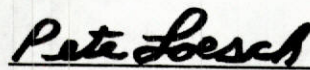
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or



2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8<sup>th</sup> day of February, 2008.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Kendall Anderson, Pastor, Homeland Church of God in Christ  
Homeland Church of God in Christ  
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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